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April 28, 2005

Via Federal Express

California Regional Water Quality Control Board
Central Valley Region
Attn: John Russell, Senior Engineering Geologist
Sacramento Main Office
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

RE: Draft Cleanup and Abatement Order, Dixon Business Park, Dixon, Solano County,
California

Dear Mr. Russell:

This is in regard to the above referenced Draft Cleanup and Abatement Order ("Draft Order"), which was included with your cover letter of March 30, 2005.

We are submitting comments, on the Draft Order, on behalf of ConAgra Foods, Inc. ("ConAgra"), and Monfort, Inc., f/k/a Monfort of Colorado, Inc. ("Monfort"). Comments are submitted on the background information and history; the prior investigations and work conducted at the Dixon site; the proposed work under the Draft Order; and additional matters that merit consideration.

Background Information and History:

On December 17, 1983, Greyhound Corporation, predecessor to Viad Corporation and its affiliates Armour & Co. and Armour Food Company sold portions of the Armour businesses to ConAgra, Inc., the predecessor to ConAgra Foods, Inc. One of the assets acquired by ConAgra through this acquisition was a cattle and sheep slaughter facility in Dixon, California, which is at the heart of the Draft Order (the "Dixon Property").

ConAgra operated the facility after its purchase as a cattle slaughter facility for only 40 months from mid-December of 1983 until approximately May of 1987, at which time operations of the Dixon plant were transferred to another subsidiary of ConAgra, Monfort, Inc. Monfort operated the facility for less than a year, and closed it in the fall of 1988. Monfort and William H. McLaughlin ("McLaughlin"), entered into negotiations for the sale and purchase of the Dixon Property. McLaughlin conducted extensive environmental due diligence documenting that high nitrates existed through out this area. A Sale Agreement was entered into on or about May 1, 1989, for the Dixon Property "as is" between McLaughlin and Monfort (the "Sale Agreement"). A copy of the Sale Agreement is attached as Exhibit 1. In the interim, McLaughlin formed Dixon Commercial Properties, Inc. a limited partnership ("DCP") to own and operate the Dixon Property at issue.

To the extent that there is any ambiguity or uncertainty on certain points concerning ownership of the Dixon Property, ConAgra wants to address each, and make sure that the following is crystal clear:

- ConAgra and/or Monfort's ownership and/or operation of the Dixon Property was for a relatively brief period, from December 1983 through October 1989.
- Neither ConAgra nor Monfort assumed any liability of Greyhound, or it's affiliates, for their ownership and operation of the Dixon Property prior to December 17, 1983.
- Neither ConAgra or Monfort assumed any liability of McLaughlin or DCP for their ownership and operation of the Dixon Property from October 1989 through the present.
- ConAgra and Monfort, with agency approval, have remediated the site.
- ConAgra and Monfort have been released by McLaughlin and DCP for all environmental liability relating to the Dixon Property, in exchange for over \$1.2 million.

The Draft Order contains a number of factual inaccuracies under the Property Ownership and Operations Section. Some of these are in regard to ConAgra and Monfort, and some are in regard to Armour (as relating to ConAgra) and Armour (as relating to Greyhound). These inaccuracies are set forth, and clarifications made, on Exhibit 2.

Prior Investigations and Work:

The Draft Order refers to prior investigations and remediation. The following clarification and comments are required.

(1) Paragraph 13 relates to closure of the ponds:

At the time of sale from Monfort to McLaughlin the only environmental issue of concern was the determination of whether sludge in the waste disposal ponds required special environmental treatment for disposal or use pursuant to applicable law. Throughout the plant's operations which predated ConAgra and Monfort's ownership by approximately 50 years the ponds had been used to collect process waters from the slaughter plant. The process waters did not contain hazardous substances or human waste, but consisted of animal waste, traces of blood, wash-down and some hair and tissue fibers which are environmentally innocuous.

In November of 1989, McLaughlin began to develop 12 acres of the 46-acre property for a proposed shopping center. During this development McLaughlin discovered an additional environmental issue. Two underground storage tanks, a sump area, and a maintenance area were uncovered, and found to be contaminated with hydrocarbons. Monfort retained DeWante and Stowall and ERM West to determine the extent of the contamination and to remediate the hydrocarbon contamination and determine how to dispose of the nitrate sludge that remained from the ponds. On April 1, 1991, ERM submitted a final site investigation to the regulatory agency. Thereafter, Monfort completed the remediation plan by it stockpiling and land farming the hydrocarbon contaminated soil and nitrate sludge from the ponds. The remediation was completed, with oversight from all affected California regulatory agencies.

Following the remediation Monfort, ConAgra and McLaughlin were all advised, by California regulatory agencies, that no further monitoring or work would be required. (See composite Exhibit 3).

(2) Paragraph 18 of the Draft Order refers to two onsite water supply wells:

The Order states that the water supply wells were abandoned, but the Regional Board does not have any information relating to their abandonment. The abandonment of these wells was handled by McLaughlin. ConAgra has certain documents relating to the abandonment of these two wells, which documents were obtained as a result of the litigation discussed below (in the Additional Consideration section). These documents are attached as Exhibit 4.

(3) Paragraph 18 of the Draft Order refers to additional characterization that was performed by DCP and ConAgra and Monfort in 2004:

The Workplan was prepared in June of 2004. The soils portion of the Workplan was prepared by Raney Geotechnical Inc., consultant for McLaughlin. The groundwater portion of the Workplan was prepared by MACTEC, consultant for ConAgra and Monfort. This Workplan was submitted to the Regional Board for review and comment. Attached as Exhibit 5 is a copy of the Workplan. No comments were received. That work was completed and a report prepared. Raney Geotechnical prepared the soils portion of the report. MACTEC prepared the groundwater portion of the report that was submitted to the Regional Board. The report shows that the upgradient levels of nitrate and TDS are essentially the same or decreasing as downgradient from the Dixon Property. In addition, the soil test results show that the levels of nitrate are higher at greater depths than at shallower depths. Both of these compel the conclusion that there is an off-site source for nitrate and TDS. Attached as Exhibit 6 is a copy of the report.

Proposed Work Under the Draft Order:

The Draft Order requires, in part, that additional work be performed to determine the lateral and vertical extent of nitrate and TDS contamination of the Dixon Property. As discussed above, this work has already been performed.

Elevated levels of nitrate and TDS have been, and continue to be an issue in the Dixon area and within the Central Valley Region. This is confirmed by other well monitoring results near the Dixon Property. For example, one well, which will be referred to as A-5, is located approximately ½ mile from the site, in a crossgradient to downgradient direction. Sampling information from this well shows nitrate and TDS levels well above Water Quality Objectives ("WQOs"). Another well B-14, is located approximately ¾ of a mile from the site shows elevated levels of nitrate and TDS and at levels above WQOs. Sampling results from area wells are attached as Exhibit 7.

The Basin Plan, for the Central Valley Region, acknowledges that agriculture is a major contributor to both nitrate and TDS in groundwater throughout the Central Valley Region. For example, the Basin Plan, Exhibit 8, provides, in part, as follows:

- Tile drain installation may result in TDS concentrations and drainage water many times greater than in the irrigation water that was applied to the crops. See Basin Plan Section IV-2.00.

- Tile drain installation may result in TDS concentrations and drainage water many times greater than in the irrigation water that was applied to the crops. See Basin Plan Section IV-2.00.
- Nitrate and other contaminants exceeding the State Drinking Water Standards occur extensively in groundwater in the basins, and public and domestic supply wells have been closed because of nitrates and other contaminants in several locations. See Basin Plan Section IV-2.00.
- Since 1980 over 200 municipal supply wells have been closed in the Central Valley because of nitrate levels exceeding the State's 45mg/l Drinking Water Standard. See Basin Plan Section IV-36.02.

Additional Considerations:

There are additional matters that must be considered in regard to the Draft Order. These include contractual relations between the parties to the Draft Order, and what the parties have done, or have not done in regard to the Dixon Property.

One of these considerations relates to the contractual relations between ConAgra, Monfort and DCP. Following the sale of the property and during Monfort's remediation of the hydrocarbon contamination and pond sludge, disputes arose between the parties with respect to the liabilities for the alleged environmental contamination including the hydrocarbon and nitrate contamination at the Dixon Property including any groundwater issues related thereto.

As a result of these ongoing disputes, the parties began negotiating a settlement during 1992. As part of these negotiations, McLaughlin insisted Monfort and ConAgra reaffirm their obligations under the Sale Agreement to provide. ConAgra and Monfort insisted that all environmental issues must be resolved, and that the objective must be to disengage without further issues for disagreement between the parties. The negotiations culminated with an agreement dated September 2, 1994, between the parties (the "Settlement Agreement"). A copy of the Settlement Agreement is attached as Exhibit 9. As a result of this Settlement Agreement and Release, Monfort and ConAgra through their affiliate financial entity Weld forgave the remaining amounts due under the Note which constituted of the entire \$1.5 million principal plus all accrued unpaid interest in exchange for a one-time \$300,000 payment from DCP, and the following release:

This Section shall be effective upon the delivery of the Note, Deed of Trust and deed of reconveyance pursuant to § 3.01.

- A. This Agreement compromises and settles all of Dixon Commercial's (McLaughlin) claims and demands against Monfort except for claims and demands arising out of this Agreement.
- B. Dixon Commercial has no claim, demand, action or cause of action against Monfort other than what might arise out of the breach by Monfort of this Agreement. Except for claims which might arise out of a breach by Monfort of this

Agreement, Dixon Commercial (McLaughlin) hereby releases and forever discharges Monfort and their respective agents, servants, employees, attorneys, successors in interest and assigns of and from all claims, demands, actions and causes of action which may now exist are hereafter approved, including but not limited to those which arise or may arise out of the Representations and Warranties and Indemnities of Seller. (our emphasis).

Pursuant to the terms of the Settlement Agreement and Release, the term "Monfort" was defined as follows:

In this Agreement, because they are affiliates, Monfort, Inc., CAG (k/n/a ConAgra Foods, Inc.) CAG Subsidiary, Inc. and Weld are jointly and severally referred to as "Monfort".

Pursuant to the Settlement Agreement and Release, the parties further agreed as follows:

3.04 No Litigation. Monfort and Dixon Commercial covenant and warrant to each other that neither of them has commenced nor shall in the future commence or prosecute any action or proceeding against the other in any court or tribunal with respect to any of the claims compromised and extinguished by this Agreement. If any action or proceeding has been or is hereafter commenced or prosecuted in violation of this paragraph, then the party responsible for such violation shall indemnify and hold the other party harmless from and against any loss, damages, liability and expense, including attorneys' fees and costs of suit, incurred as a result of such violation. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding at law or in equity which may be instituted or attempted in any forum in breach of this Agreement.

In summary, by the release Monfort and ConAgra obtained a full and complete release of all disputes and claims, especially environmental, covered by the Sale Agreement in exchange for their forgiveness of \$1.2 million in debt to Mr. McLaughlin and DCP.

Notwithstanding the Settlement Agreement, in May of 2003, DCP (McLaughlin) filed a lawsuit against, among others, Monfort and ConAgra. The lawsuit alleges, in summary, that McLaughlin seeks to void the release, but keep the \$1,200,000. However rather than pursue its lawsuit, to has stayed the action; and actively pursued this Agency to press for an investigation of his Property; to again avoid having to spend any of his \$1,200,000.

Summary:

In summary, the following important points should be considered by the Regional Board:

- ConAgra and/or Monfort's ownership and their operation of the Dixon Property was for a relatively brief period, from December 1983 through October 1989, or less than 10% of the facility's over 50 years of operation.
- Neither ConAgra nor Monfort assumed any liability of Greyhound and/or Viad, or their affiliates, for the Dixon Property.
- ConAgra and Monfort have been released by McLaughlin and DCP, in return for \$1,200,000, for all environmental liability relating to the Dixon Property. He should be required to honor his release and spend the \$1,200,000 as intended.
- ConAgra and Monfort spent considerable funds to evaluate and close the waste disposal ponds on the Dixon Property, and were advised by California regulatory agencies that no further monitoring or work would be required.
- ConAgra and Monfort performed less than one year ago additional investigation in regard to the Dixon Property, in conjunction with DCP, which confirms that elevated levels of nitrates and TDS exists upgradient from the property, and these levels are substantially the same as downgradient from the property; in other words the property is not contributing to the groundwater contamination.
- In addition, existing data, and Regional Board information show that elevated nitrates and TDS are a groundwater issue in the Dixon area and throughout the Central Valley Region.

CONAGRA FOODS, INC, AND MONFORT, INC., RESPECTFULLY REQUEST A HEARING ON ALL ISSUES RELATING TO THE DRAFT ORDER.

ConAgra and Monfort also respectfully request that they be given a chance to address each matter further before any decision by the Regional Board. ConAgra and Monfort reserve the right to supplement these comments on the Draft Order, and reserve all of their rights concerning this matter. These comments are made solely for the purpose of commenting on the Draft Order, and may not be used for any other purpose.

ConAgra and Monfort appreciate the opportunity to present these comments on the Draft Order.

Sincerely,



Steven P. Case

Enclosures

cc: Tom McGowan
SPC/jsm